

**BEFORE THE  
FEDERAL COMMUNICATIONS Commission  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Parts 1, 21, 73, 74 and 101 of the	)	WT Docket No. 03-66
Commission's Rules to Facilitate the Provision of	)	RM-10586
Fixed And Mobile Broadband Access, Educational	)	
and Other Advanced Services in the 2150-2162 and	)	
2500-2690 MHz Bands	)	
	)	
Part 1 of the Commission's Rules – Further	)	WT Docket No. 03-
67		
Competitive Bidding Procedures	)	
	)	
Amendment of Parts 21 and 74 to Enable	)	MM Docket No. 97-
217		
Multipoint Distribution Service and the	)	
Instructional Television Fixed Service to Engage	)	
in Fixed Two-Way Transmissions	)	
	)	
Amendment of Parts 21 and 74 of the	)	WT Docket No. 02-68
Commission's Rules With Regard to Licensing	)	RM-9718
in the Multipoint Distribution Service and in the	)	
Instructional Television Fixed Service for	)	
the Gulf of Mexico	)	
	)	

**CONSOLIDATED REPLY TO PETITION FOR RECONSIDERATION**

Wireless Direct Broadcast System ("WDBS"), pursuant to Section 1.429(g) of the Federal Communications Commission's ("Commission") rules, hereby submits its Consolidated Reply to certain of the Oppositions to the Petitions for Reconsideration ("Oppositions") to the *Report and Order and Further Notice of Proposed Rulemaking* ("Order")<sup>1</sup> in the above-referenced proceeding.

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<sup>1</sup> Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, Report & Order and Further Notice of Proposed

**I. The Commission Should Adopt the Coalition's Initial Proposal Allowing MVPD's to Opt-Out of a Transition Without Having to Seek A Waiver**

WDBS supports the petitioners who opposed the Commission's requirement that MVPDs must request a waiver in order to "opt-out" of a transition.<sup>2</sup> The time, expense and uncertainty in drafting and waiting for a response to a waiver, not to mention that the outcome to such a request may be dependent on when and by whom it is processed, is burdensome as well as puts those businesses which are subjected to such a process in severe jeopardy of continued operation.

WDBS has been operating a wireless cable video service in Bisbee, Arizona, since the early 1990s and currently serves approximately 900 cable subscribers in the greater Bisbee market. WDBS hopes to provide data service to this area as well, but has yet to secure financing to do so. If the Commission were to require that WDBS submit a waiver in order to continue its operations, the uncertainty of the outcome of such a request would jeopardize any chances of WDBS acquiring the financing it needs to continue to operate its system and provide new services. Furthermore, if the

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*Rulemaking*, 19 FCC Rcd 14165 (July 29, 2004). A synopsis of the Order was published in the Federal Register on December 10, 2004. 69 Fed. Reg. 72020.

<sup>2</sup> See Oppositions of Wireless Communications Association International, Inc. ("WCAI") at 26-30; Sprint Corporation ("Sprint") at 9-11; Nextel Communications ("Nextel") at 20-23; BellSouth Corporation ("BellSouth") at 17-19; BRS Rural Advocacy Group ("BRS Group") at 7-9; Choice Communications, LLC ("Choice") at 2-3; and the National Telecommunications Cooperative Association.

Commission were to reject such a request, such a denial would effectively terminate WDBS's operations. While the Commission may view terminating such small-sized operations as the price that must be paid to implement its new bandplan, the actuality is that it is the public interest that will suffer, since it is the public that loses access to local operators like WDBS and must turn to national companies for such service, companies that sustain less and less competition and that often do not provide the same personalized service as a local vendor.

The WCAI, in its "white paper," provided a proposal that can be implemented fairly and provide certainty for wireless cable operators in this industry.<sup>3</sup> Accordingly, the FCC should reverse its earlier decision to reject this proposal and seek to have an automatic "opt-out" election for MVPDs that meet the criteria cited in the white paper proposal incorporated into its rules. Furthermore, the Commission must provide replacement reallocation spectrum for those entities that do "opt-out" of the transitioning process.

## **II. The Commission Should Make Clear that Relocation Costs for the BRS-1 and BRS-2 Channels Will be Borne by Advance Wireless Services Auction Winners**

WDBS shares the concerns of other petitioners that the Commission must clarify that relocation costs for the BRS-1 and BRS-2 channels will not be borne by the current licensees of these channels, and their operators, but

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<sup>3</sup> See "A Proposal for Revising the MDS and ITFS Regulatory Regime," as submitted by the WCAI, the National ITFS Association and the Catholic Television Network, RM-10586 at Appendix B, pp 16-18 (filed Oct. 7, 2002).

by the Advanced Wireless Services (“AWS”) auction winners.<sup>4</sup> WDBS does operate a BRS-1 channel as part of its wireless cable service, requiring that it replace transceivers for all of its customers once these channels are reallocated. Such costs are likely to endanger its ability to continue to operate its system. Accordingly, the Commission should make clear that AWS auction winners will bear this burden, and provide a means for operators such as WDBS to seek reimbursement of such a transition, before implementing a transition deadline for the remaining Broadband Communications Service channels.

### **III. EBS Leases Should Not Be Limited to 15 Years**

WDBS supports allowing EBS licensees to negotiate leases according to their own needs by following the rules and policies adopted in the *Secondary Markets* proceeding, especially the elimination of the overly restrictive requirement that EBS lease terms be limited to 15 years.<sup>5</sup> WDBS holds leases with three EBS licensees in its market, at least one of which is for less than a 15 year term. Accordingly, it favors allowing EBS licensees to negotiate according to their needs and not accordingly to a formula, as such restrictions could only be viewed as arbitrary.

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<sup>4</sup> See Oppositions of BellSouth at 23; BRS Group at 15; and Choice at 3. See also Petitions for Reconsideration of WCAI at 16; and Sprint at 7-8.

<sup>5</sup> See Oppositions of WCAI at 30-34; Sprint at 5-7; Nextel at 14-20; BellSouth at 10-12; and Luxon Wireless, Inc. (“Luxon”) at 5-6.

#### **IV. EBS Programming Requirements Should not be Increased**

For the reasons very clearly stated in the WCAI's Opposition<sup>6</sup>, the programming requirements as embodied in the current rules should not be increased. This is an issue that was very thoroughly deliberated by the Commission and which the industry has commented on throughout various proceedings, including this one and should not be revisited.

#### **V. An Option to Purchase Equipment Upon Termination of an EBS Lease Should Not Be Mandated**

WDBS is also in agreement that the Commission should not mandate that all EBS excess capacity leases must contain a provision by which the EBS licensee may purchase the current or similar transmitting equipment at fair market value.<sup>7</sup> It would be an onerous burden for WDBS to meet such a condition when there are other operators with whom an EBS licensee could negotiate a lease or, as an alternative, the EBS licensee could purchase and operate equipment on its own. Rather than requiring that such equipment be provided pursuant to the Commission's rules, it should be left to the parties to negotiate what each parties' obligations will be in the event of termination of a lease.

#### **CONCLUSION**

WDBS urges the Commission to amend its rules as set forth in this Consolidated Reply and according to its other pleadings submitted as part of this proceeding.

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<sup>6</sup> WCAI at 37-41; *see also* Sprint at 7-9; Nextel at 26; BellSouth at 8-9; and Luxon at 3-4.

<sup>7</sup> See WCAI at 32.

Respectfully submitted,

**WIRELESS DIRECT BROADCAST**

**SYSTEM**

By /s/ John McLain  
John McLain

March 4, 2005